

AUG 27 2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE


In re patent application of:)	Before the Examiner
Thomas Zdeblick et al.)	Alvin J. Stewart
)	
Serial No. 10/763,719)	Group Art Unit 3774
)	
Filed January 23, 2004)	Ref. No. MSDI-200/PC261.21
)	
METHODS AND INSTRUMENTS)	August 27, 2009
FOR INTERBODY FUSION)	

Via Facsimile Transmission: 571-273-8300**INTERVIEW SUMMARY**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the telephonic interview conducted between Examiner Stewart and the undersigned representative on June 16, 2009, please enter the following Interview Summary. Additionally, please provide any extensions of time necessary and charge any additional fees which may be necessary to Deposit Account No. 12-2424, but not to include any payment of issue fees.

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office at 571-273-8300 on:	
August 27, 2009	_____
Date of Transmission	_____
Brad A. Schepers	_____
Name of Registered Representative	_____
	_____
Signature	_____
August 27, 2009	_____
Date of Signature	_____

REMARKS

The Applicant's representative thanks Examiner Stewart for the courtesy of initiating the telephonic interview conducted on June 16, 2009 to advance prosecution of the subject application. Participants in the telephonic interview included Examiner Stewart and the undersigned representative.

Various amendments to the claims were discussed to correct informalities and/or improve their form to thereby place the subject application in condition for allowance. Examiner Stewart indicated that the subject application would be placed in condition for allowance if the proposed amendments were incorporated into the claims. Agreement was reached between Examiner Stewart and the undersigned representative, which ultimately led to issuance of the Notice of Allowance and the Notice of Allowability dated July 6, 2009 including entry of the proposed claim amendments via an Examiner's Amendment.

Respectfully submitted,

By: 

Brad A. Schepers
Reg. No. 45,431
Krieg DeVault LLP
One Indiana Square, Suite 2800
Indianapolis, Indiana 46204-2079
(317) 238-6334 voice

Interview Summary
Application Serial No. 10/763,719
Inventor: Zdeblick et al.

Page 2 of 2

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COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Notice of Allowability mailed to the Applicant on July 6, 2009, please enter and consider the following comments regarding the Reasons for Allowance set forth therein. No extension fees are believed to be due with regard to the filing of this communication. However, please provide any extensions of time necessary and charge any additional fees which may be necessary to Deposit Account No. 12-2424, but not to include any payment of issue fees.

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office at 571-273-8300 on:	
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REMARKS

In response to the Reasons for Allowance set forth in the Notice of Allowability mailed to the Applicant on July 6, 2009, please enter the following comments. The Reasons for Allowance indicate that the independent claims are allowable since "[t]here is no evidence in the prior art of a distraction device comprising a stem portion having a longitudinal axis, the stem portion having a first and second ends and side portions, each of the side portion defining a side surface having concave curvature extending from an upper surface to a lower surface. A flange portion extending radially from the proximal end of the stem portion and having a side contacting face capable of contacting a patient's adjacent side face vertebrae." (See pages 7-8 of the Notice of Allowability).

The Applicant notes that the Reasons for Allowance appear to be directed to certain elements and features recited in independent claim 41. However, the Applicant submits that the remaining independent claims that have been indicated as allowed recite other combinations of elements and features that are considered patentable over the art of record, but which are not necessarily addressed by the Reasons for Allowance. The Applicant further submits that patentability of each of the independent claims is not based on the particular combination of elements and features set forth in the Reasons for Allowance. Instead, patentability of the independent claims is based on the particular combinations of elements and features recited in each individual independent claim.

Respectfully submitted,

By: 

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Comments on Statement of
Reasons for Allowance
Application Serial No. 10/763,719
Inventor: Zdeblick et al.
Filing Date: January 23, 2004

Page 2 of 2